

## REMARKS

Applicants respectfully request reconsideration of the present application in view of the reasons that follow. Claims 22-34 were cancelled previously. Claims 18-21, 39-45, and 48-57 were requested to be cancelled in response to a restriction requirement. Claims 1-17, 35-38, 46, and 47 are now pending in this application.

### **I. Rejection of Claims 1-17, 36-38, and 46 Under 35 U.S.C. § 103(a)**

In section 4 of the Office Action, Claims 1-17, 36-38, and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US Patent Publication No. 2004/0053630 to Ramos *et al.* (Ramos) in view of US Patent Publication No. 2002/0019231 to Palenius *et al.* (Palenius). Specifically, the Examiner states “Ramos *et al.* (US 6,944,143)(hereinafter Ramos).” Applicants assume that the Examiner intended to reference 2004/0053630 instead of US Patent No. 6,944,143 to Bayley *et al.* because Ramos is referenced in the discussion, and the disclosure of Ramos is correctly referenced by paragraph numbers, whereas the disclosure of US Patent No. 6,944,143 is not correctly referenced by paragraph numbers as used by the Examiner.

First, Applicants submit that Ramos is not prior art under 35 U.S.C. 103(a) because Ramos and Applicants have the same assignee (i.e. “Nokia Corporation”). 35 U.S.C. 103(c)(1) states:

“Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.” (Emphasis added).

Ramos was filed on October 9, 2001, and was published on March 18, 2004. Applicants’ effective filing date is September 10, 2002. Therefore, Ramos qualifies as prior art only under subsection (e) of section 102. An assignment by the inventors of Ramos to Nokia Corporation was executed in 2003 and recorded with the Patent and Trademark Office at Reel/Frame 014642/0368 on September 22, 2003. An assignment by the inventors of the

present application to Nokia Corporation was executed in 2005 and recorded with the Patent and Trademark Office at Reel/Frame 016819/0575 on March 7, 2005. Therefore, as required by the 103(c) exclusion, there is a statement on the record that Ramos and the present application were commonly owned at the time of invention due to “an obligation of assignment to the same person.” (35 U.S.C. 103(c)(1)). Thus, Ramos is not prior art to the present application.

Second, the Examiner agrees that Palenius fails to describe at least “ordering the radio access means based on said information” as recited by independent Claim 1. Therefore, Palenius fails to teach, suggest, or describe all of the elements recited in at least independent Claims 1. The remaining claims depend from Claim 1. As a result, Applicants respectfully request withdrawal of the rejection of Claims 1-17, 36-38, and 46.

## **II. Rejection of Claims 35 and 47 Under 35 U.S.C. § 103(a)**

In section 5 of the Office Action, Claims 35 and 47 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ramos in view of Palenius and further in view of US Patent No. 5,655,217 to Lemson (Lemson). Applicants respectfully disagree. As discussed in Section I. above, Ramos is not prior art to the present application. As also discussed in Section I. above, Palenius fails to teach all of the elements of at least independent Claim 1 from which Claims 35 and 47 depend. Applicants respectfully submit that Lemson also fails to teach all of the elements of at least independent Claim 1.

Lemson describes “a system for allocating one or more ranges of transmission frequency to the communications network, in order to prevent the network from interfering with received signals of an incumbent radio system.” (Abstract). Lemson, however, fails to provide any teaching whatsoever related to “ordering the radio access means based on said information” as recited in Claim 1. As a result, Applicants respectfully request withdrawal of the rejection of Claim 35 and 47, which depend from Claim 1.

Applicants believe that the present application is in condition for allowance. Favorable reconsideration of the application is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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